

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY

Application for a Certificate of Public Convenience and Necessity, pursuant to Section 8-406.1 of the Illinois Public Utilities Act, and an Order pursuant to Section 8-503 of the Illinois Public Utilities Act, to Construct, Operate, and Maintain a new 345 kilovolt transmission line in Ogle, DeKalb, Kane and DuPage Counties, Illinois

Docket 13-0657

**INITIAL BRIEF**

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**I. Introduction**

Commonwealth Edison Company (“ComEd”) has designed a new overhead 345kV electric transmission line, approximately sixty (60) miles long, and related facilities that would connect ComEd’s substation at Byron to its substation at Wayne, to be located on land in Ogle, DeKalb, Kane and DuPage Counties. It refers to the project as the Grand Prairie Gateway Transmission Line Project (“GPG Project” or “Project”). ComEd proposed a primary route for the Project (“Primary Route”), approximately 60 miles long, and an alternative route for a portion of the route (“Alternate Route”), totaling approximately 68 miles long.

ComEd filed its Petition for a Certificate of Public Convenience and Necessity (“CPCN”) with the Illinois Commerce Commission (“Commission”) on December 2, 2013 (“ComEd Petition”). ComEd utilized the expedited procedure alternative under Section 8-406.1 of the Illinois Public Utilities Act (“PUA”), 220 ILCS 5/8-406.1. ComEd also is seeking an order pursuant to Section 8-503 of the PUA, authorizing or directing ComEd to construct the proposed transmission line and related facilities. By Notice dated December 19, 2014, the Commission granted the motion of the

Commission Staff to extend the statutory 150 deadline for a Commission Order by 75 days.<sup>1</sup> Each of the persons comprising the SKP Parties filed a Petition to Intervene starting with William Lenschow on December 27, 2013, and ending with Ellen Roberts Vogel on February 14, 2014. URMCo filed its Petition to Intervene on March 19, 2014.

## **II. Reason for Project**

In this novel case, ComEd filed the ComEd Petition, not on the basis that the Project is needed to enhance reliability, but on the basis that its transmission customers (including ComEd itself) are unable to hedge transmission costs sufficiently, thereby risking increases in the cost of delivered electricity, because of physical constraints on a portion of ComEd's transmission system. PJM Interconnection, L.L.C. ("PJM"), a multi-state regional transmission organization formed under the authority of the Federal Energy Regulatory Commission ("FERC"), operates the transmission systems of its member transmission-owning utilities, including ComEd. PJM also manages the wholesale electricity market within its region. ComEd Petition, p. 2. As ComEd described, the specific hedging mechanism involved, Stage 1A Auction Revenue Rights ("Stage 1A ARRs") are financial rights available to transmission customers to hedge transmission congestion and its resulting increased costs. This hedging mechanism "serves to protect native electric load utilization of the transmission system by providing long-term financial hedges against congestion" on ComEd's transmission lines. ComEd Petition, p. 3. As part of its annual Regional Transmission Expansion Plan ("RTEP"), in June 2012, PJM identified constraints on ComEd's transmission system that limit the "simultaneous feasibility" of Stage 1A ARRs, rendering them "infeasible." ComEd Petition, p. 4.

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<sup>1</sup> In his Memorandum to the Commission recommending approval of Staff's motion to extend time, Judge Hilliard noted, "So far as is known to Staff, this is the first instance in which a major transmission project has been undertaken in Illinois for this purpose." ALJ Hilliard Memo to Commission, p. 1 (December 6, 2013).

ComEd witness Paul McGlynn, PJM's Director, System Planning, illustrated through two scenarios how the ARRs operate to hedge the risk of added costs from transmission congestion, and how the lack of adequate physical capacity on the transmission system leads to a shortfall of ARRs, thereby rendering the process infeasible. When this happens, transmission customers are not fully hedged. See ComEd Exh. 3.0, pp. 14-19; ComEd Exh. 3.01. As part of its RTEP process, in October 2012, PJM selected and approved the GPG Project that would resolve the infeasibility issues without creating reliability issues. ComEd Petition, p. 4. Mr. McGlynn testified that the GPG Project was identified and recommended by the PJM Transmission Expansion Advisory Committee ("TEAC") in June 2012 as part of the 2012 RTEP. The Project was identified then as the "Byron-to-Wayne." ComEd Exh. 3.0, p. 26. TEAC prepared a report with its recommendations to the PJM Board dated October 2012. ComEd Exh. 3.0, p. 27; ComEd Exh. 3.06 ("2012 TEAC Report"). Thomas Leeming, Director of ComEd's Transmission Operations and Planning Department, is ComEd's representative on the PJM Planning Committee and the TEAC. ComEd Exh. 2.0, p. 3. He testified that the TEAC provides recommendations to aid in the development of the RTEP, which is based on a PJM planning model for which ComEd, as a PJM member, provides input, data and analysis. ComEd Exh. 2.0, p. 6.

It is clear that ComEd is requesting approval for the GPG Project because of the Stage 1A ARR infeasibility issue. ComEd's lead witness in this proceeding was Steven Naumann, Vice President of Transmission and NERC Policy for Exelon Business Services Company. Mr. Naumann was asked in his rebuttal testimony to respond to Staff witness Yassir Rashid's testimony (Staff Exh. 2.0) that the Project is not required for physically adequate, efficient, and reliable service:

Q. What is ComEd's response to Mr. Rashid's conclusion?

A. ComEd has little dispute with Mr. Rashid in this regard. ComEd has never claimed that the GPG Project is justified based on any deficiency in the capacity or reliability of the transmission system. Nor did PJM or the results of the regional planning process justify the Project on that basis. Of course, the Project does have real and significant reliability and operational benefits [footnote citation to testimony omitted], which Mr. Rashid's testimony does not dispute. However, Mr. Rashid goes on to say that the Commission should give no consideration to these undisputed benefits. And, those benefits would have to be considered in any fair balancing of all of the costs and benefits of the Project. However, ComEd has always been clear that the Project serves the public convenience and necessity not because of those reliability or operational benefits, but because the Project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives.

ComEd. Exh. 9.0 CORR., pp. 6-7, lines 131-143 (emphasis added).

### **III. Project Not Needed & Does Not Qualify for CPCN**

#### **A. PJM approval does not change Commission's legal duty**

ComEd presented the GPG Project to the Commission as one that must be approved, regardless of cost. In its verified Petition ComEd states that:

[I]f a condition occurs where the Stage 1 ARRs are infeasible in any year of the analysis, *i.e.*, that the transmission system as it exists cannot support full funding of the required ARRs, then PJM must determine a solution that alleviates the congestion causing the infeasibility and identify and recommend a transmission upgrade for inclusion into the RTEP. This ARR analysis is a "pass/fail" test. Once PJM finds infeasibilities, PJM must remedy the infeasibilities by finding transmission upgrades, just like the test for reliability violations.

ComEd Petition, pp. 3-4, para. 6. Mr. Naumann testified, "Thus, ensuring the feasibility of Stage 1A ARRs not only has been found critical to market efficiency, PJM must eliminate Stage 1A ARR violations through transmission upgrades designed to comply with its tariff and federal law." ComEd. Exh. 1.0, p. 20, lines 378-80. Mr. Naumann testified further that that the approved transmission upgrades will not be subject to a cost/benefit analysis. ComEd Exh. 1.0, p. 20, lines 383-86. PJM representative Mr. McGlynn testified, "Under the PJM tariff, if infeasibilities are identified due to system conditions, then PJM must increase

the capability limits of the binding constraints that created the infeasibilities. [footnote reference to PJM Operating Agreement omitted]” ComEd Exh. 3.0, pp. 19-20, lines 378-80. In his rebuttal testimony, Mr. McGlynn revisits what he considers the only acceptable outcome:

“As I have noted previously, PJM has an obligation under the PJM Operating Agreement [footnote omitted], which is a FERC filed tariff with the force and effect of federal law, as well as under the FERC-filed PJM Open Access Transmission Tariff [footnote cite to Tariff omitted], to reinforce the transmission system to address constraints that limit the simultaneous feasibility of Stage 1A ARR. This is not a “practice” or “policy” of PJM, as Mr. Zuraski describes it.

ComEd Exh. 14.0, p. 12, lines 207-11.

Both Mr. Naumann and Mr. McGlynn purport to testify as to what federal law requires. While Mr. Naumann has a law degree, neither witness was testifying as a lawyer, and their statements of what the law may or may not require should be disregarded. Contrary to what ComEd witnesses contend, federal law does not require that PJM eliminate the infeasibility of Stage 1A ARRs. The FERC addressed this issue in 2011, in its consideration of a Complaint filed on March 2, 2011, by PPL EnergyPlus, LLC against PJM. *PPL EnergyPlus, LLC v. PJM Interconnection, L.L.C.*, Order Dismissing Complaint, Docket EL11-25-000, 134 FERC ¶ 61,263 (Fed. Energy Reg. Comm’n Mar. 31, 2011). PPL EnergyPlus (“PPL”) alleged that PJM violated its tariff by failing to model certain transmission outages in the simultaneous feasibility tests conducted for the applicable annual financial transmission rights (“FTR”) auction. PPL argued that, as a result, market participants suffered a reduction in ARR revenues and increases in certain costs. In its Order Dismissing Complaint, the FERC held that, among other things, PJM had the right to exercise discretion in its modeling and could determine whether to include or exclude the specified outages. *Id.* The FERC rejected PPL’s contention that PJM violated its tariff in taking actions that caused revenue inadequacy, stating, “If PJM does not meet its goal of revenue adequacy in a

particular instance, that does not mean that a Tariff violation has necessarily occurred. In fact, the Tariff contemplates the possibility of underfunding FTRs in a planning period. [footnote reference to Tariff omitted]” *Id.* at p. 17, ¶ 46. PPL filed for rehearing, and the FERC issued its Order Denying Rehearing. *PPL EnergyPlus, LLC v. PJM Interconnection, L.L.C.*, Order Denying Reh’g, Docket EL11-25-001, 136 FERC ¶ 61,060 (Fed. Energy Reg. Comm’n July 27, 2011).. The FERC held that it is not the purpose of conducting the simultaneous feasibility determination to ensure that FTRs can never be underfunded. The FERC noted that PJM explained that if it had a mandate to ensure that FTRs could never be underfunded, it would adopt an overly conservative approach to the grant of firm transmission service, such that many customers would go without the level of firm service on which they relied historically in scheduling power between resources and load. *PPL EnergyPlus, LLC v. PJM Interconnection, L.L.C.*, Order Dismissing Complaint, Docket EL11-25-000, 134 FERC ¶ 61,263, p. 11 (Fed. Energy Reg. Comm’n Mar. 31, 2011).. Based on the PPL decision, there is no federal law requirement that PJM eliminate the particular ComEd transmission system Stage 1A ARR infeasibilities present here. ComEd overstates the PJM directive and related requirements to do so.

Despite ComEd’s characterizations of what PJM may order or require ComEd to do as to building new electric transmission capacity, this Commission has a legal duty under the PUA to scrutinize the GPG Project and make the required statutory findings in order to grant ComEd a CPCN. No federal pre-emption exists here; indeed, ComEd has not expressly argued that pre-emption applies, although its Petition and witness statements would appear to imply as much. In order to qualify for a CPCN under PUA Section 8-406.1(f), the Commission must find that the Project will promote the public convenience and necessity, and that, among other requirements, the Project either:



1. Is necessary to provide adequate, reliable, and efficient service to the public utility's customers and is the least-cost means of satisfying the service needs of the utility's customers; or
2. Will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives.

220 ILCS 5/8-406.1(f)(1). As described hereinabove, ComEd is seeking its CPCN under the second prong of the foregoing alternative test, i.e., that the Project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives. Section 8-406.1 (i) requires that an order granting a CPCN under this section of the PUA must include an order pursuant to Section 8-503. Under Section 8-503, in order to authorize or direct ComEd in this case to construct the Project, the Commission must find that the Project is "necessary and should be erected" to promote the development of an effectively competitive electricity market. 220 ILCS 5/8-503.

B. ComEd has failed to meet its statutory burden

ComEd has failed to demonstrate that the GPG Project is required by the public convenience and necessity. It has also failed to demonstrate that the Project is either necessary or least cost. ComEd conceded that the Project does not meet the public convenience and necessity standard on the basis of improvements to, or to correct any shortcomings in, reliability. Staff witness Rashid also concluded that the Project is not necessary for *Supra*, pp. 3-4. Rather, the basis for the Project is to resolve the infeasibility of Stage 1A Auction Revenue Rights. ComEd attempts to fit this hedging mechanism factor into the statutory test of promoting the development of an effectively competitive electricity market. ComEd has not shown that the reduction of risks for certain customers in the specific geographic area affected by the shortage of financial hedging tools meets the PUA legal requirement that the Project promote the development of an effectively

competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives.

ComEd failed to demonstrate how the Project would be equitable to all customers, as is required. ComEd also failed to demonstrate that the Project is least cost. In fact, as described hereinabove, ComEd initially took the position that the Project's costs were essentially irrelevant, that PJM only looked to what additional transmission capacity could be constructed to eliminate the infeasibility without harming reliability, regardless of cost. By such logic, if the Project were to cost \$1 billion, it would still have survived PJM's modeling and studies and been approved. Only after Staff witness Richard Zuraski raised objections to the Project because of the absence of any cost/benefit analysis and lack of demonstrated benefits compared to its costs (Staff Exh. 1.0, pp. 12-20) did ComEd offer evidence of the benefits of the Project compared to its costs.

Nowhere in any of the prepared testimony of PJM representative Mr. McGlynn did he even use the word "cost." McGlynn, Tr., 78-79. When it was pointed out to Mr. McGlynn that the word "cost" did appear in the TEAC Report (ComEd Exh. 3.06, p. 4), he then offered that PJM did consider the cost of the chosen solution. McGlynn, Tr., 76-79. The cost of the single circuit 345kV Project (see ComEd Exh. 2.0, p. 7, line 132 – "Install one 345kV transmission line...") as included in the TEAC Report, dated October 2012, was \$109.6 million. The Project name in the TEAC Report was "Byron – Wayne." ComEd Exh. 3.06, p. 4. Mr. McGlynn acknowledged that this project is the same as the GPG Project. Between PJM's approval of the Project, however, and ComEd's Petition to this Commission in December 2013, the cost of the Project, even considering only incremental costs and use of the cheaper Primary Route, grew to \$251 million, substantially more than double the cost when it was approved by PJM. ComEd Exh. 17.0, p. 2, line 42; Zuraski, Tr., 318. Of the approximate \$141 million increase, \$71 million is due to the substitution of multi-circuit structures for single circuit towers. Kaup, Tr., 111:3-4.

This Project cost discrepancy is noteworthy, and was only exposed during cross-examination at the hearings. During the cross-examination of Mr. Zuraski, following on his objection to questioning about the change in cost of the Project, Counsel for ComEd stated that “the project that was the source of the 109-million-dollar figure is not the project that is currently before the Commission.” Tr., 315:17-20. That statement is telling; and, indeed, the \$109.6 million Byron – Wayne project that PJM approved is not the same \$251 million Project for which ComEd is seeking a CPCN from the Commission in this proceeding. Because they are different projects, ComEd’s request for approval of the GPG Project lacks the PJM underpinning or basis that ComEd has represented to the Commission, and therefore must be rejected.

Mr. Naumann testifying later in the same day as Mr. Zuraski attempted to repair the damage. Mr. Naumann’s attempted rescue of the Project from this problem falls short. When asked about the cost discrepancy on cross, Mr. Naumann offered several new items of information, all unsubstantiated and including what can be said to constitute self-serving hearsay; and not previously included as part of the three rounds of ComEd prepared testimony and exhibits. He first referred to a “desk estimate” by consulting firm URS that was the basis for the \$109.6 million Project cost estimate. Naumann, Tr. 387:15-18. This was the number incorporated into the “final PJM report given to the board of directors.” Naumann, Tr., 388:2-3. Mr. Naumann then testified further on cross that the projected cost of the Project increased as a result of detailed engineering, accounting for land values, union labor, the use of “free-standing poles” instead of lattice towers, and certain other costs, and the use of double and triple circuit structures. Naumann, Tr., 388:11-25; 389:1-6. Mr. Naumann then stated that the new cost estimate was discussed with PJM staff in a meeting he attended, and “that was fine with PJM.” Naumann, Tr., 389:7-11; Tr. 391:1-6. There is no evidence, however, that the Project, as significantly modified, ever went back before the PJM Board. Consequently, we can only assume it did not, as if it had, surely Mr. Naumann would have

so testified. Mr. Naumann's additional oral testimony at the hearing only serves to highlight ComEd's lack of forthrightness with the Commission and the other parties about important aspects of the Project. We are all left with the question, "Why wasn't such important and material information provided earlier?" We can discern that ComEd stands to profit from this Project, and that because it will go into ComEd's rate base, and qualify to earn a rate of return on equity of 11.5%, the greater the Project's cost the more ComEd stands to profit. See Naumann, Tr., 397:17-25; Tr., 398:10-15; Zuraski, Tr., 318:25; Tr., 319:1-10.

As to the substitution of the multi-circuit structures at a \$71 million additional cost, Mr. Naumann acknowledged that PJM has not begun to consider the need for any additional circuits; and that they would be several years out into the future. Naumann, Tr., 397:8-16. He stated that Mr. Leeming made it clear that the next set of circuits "would be needed for reliability purposes of the Chicago area around 2024." Naumann, Tr., 399:17-19. Consequently, ComEd is seeking this Commission's approval of a project with at least \$71 million in added costs on which it will earn a return that will not be used for any purpose and not be useful to customers, if at all, until 10 years from now. Whether any additional high voltage transmission circuits will be required that far in the future is subject to question, especially with recent trends in the electric utility industry that are combining to suggest demand for central station power transmitted across long, high voltage power lines will decline, and perhaps significantly. Dr. Richard Tabors testified on behalf of URM that the utility industry is undergoing fundamental changes, that localized sources of power, including rooftop solar and local battery storage, are becoming more economical and will grow more rapidly. Customer use of intelligent technologies such as communication and control systems also will serve to dampen demand at peak times, also contributing to lower demand and lessening the need for traditional sources of central station power and transmission. See URM Exh. 2.0 (Rebuttal testimony of Dr. Richard Tabors).

This is the first Project of its type that any Exelon utility has proposed, and it is a case of first impression before this Commission. Naumann, Tr., 393:3-15. This also apparently is the first Stage 1A ARR project to be selected by PJM, and the first to be presented to any state regulatory commission.<sup>2</sup>

As another reason the Commission should reject the ComEd Petition, ComEd used a pedantic, narrow determination that the only way to resolve ARR infeasibilities was to construct new transmission lines, despite the fact that other factors could serve to alleviate if not eliminate the infeasibility issue. Other methods, for example, were to review and increase the ratings on transmission circuits. As Mr. Leeming testified, the rating of a transmission element, such as a transmission line, affects the amount of power flow across that element. Leeming, Tr., 47:6-17. An increase in a line's rating, would translate into increased power flows, thereby relieving congestion on the affected transmission line. Leeming, Tr., 53:9-14; McGlynn, Tr., 74:19-25; Tr., 75:1-9; Zuraski, Tr., 325:12-25; Tr., 326:1-2. As URMCE CEO Adam Rousselle testified, transmission-owning utilities like ComEd can realize increased transmission capacity without resorting to the traditional method of constructing new lines and circuits. By measuring and optimizing transmission conductor temperatures, URMCE is capable of boosting a line's capacity rating, thereby saving the utility and its customers substantial sums. Mr. Rousselle described one such upgrade project it has in the PJM transmission project queue for one of ComEd's other transmission circuits. URMCE Exh. 1.0 (Rebuttal testimony of Adam Rousselle). As Mr. Leeming testified, he is not aware of the last time NERC (North American Reliability Corporation) revised a rating that ComEd had placed on a transmission system element. Leeming, Tr., 56:13-24. Mr. McGlynn could not recall a specific

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<sup>2</sup> This representation appears in a March 21, 2014, application by ComEd to the FERC for recovery of 100% of Construction Work in Progress in rate base and authority to recover 100% of all prudently-incurred development and construction costs if the GPG Project is abandoned or cancelled. Letter application to FERC, Section B.1., p. 8 (March 21, 2014), docketed as ER 14-1556-000, Request for Transmission Rate Incentives.

instance of PJM revising a utility transmission system element rating within the last 5 years. McGlynn, Tr., 99:6-25; Tr., 100:1-12. URM's project is designed to improve the power flows on the Byron to Cherry Valley circuit. It is pending in the PJM queue, and has an executed Facilities Study Agreement. URM Exh. 1.0, p. 3. URM conceded that its project would not directly impact the need for the GPG Project, but the possible application of its technology to other circuits could serve as an alternative, lower cost solution to the much more expensive alternative of building new transmission lines. It is apparent that ComEd's financial incentive is to build more transmission structures and circuits, given that the capitalized cost is added to ComEd's rate base and eligible for a return on equity of 11.5%.

Mr. Leeming testified that power flows from the western to the eastern portions of the ComEd zone had increased significantly. ComEd Exh. 2.0, p. 13, lines 269-271. Mr. Naumann acknowledged that the Project would carry nuclear power from the west, including from Exelon's Byron and Quad Cities Stations. Naumann, Tr., 384: 17-25; Tr., 385: 1-18. If either or both of those nuclear stations were to be deactivated and closed, the power flows could be affected. McGlynn, Tr., 82:4-25; Tr., 83:1-13. ComEd's parent company Exelon has publicly raised concerns about the potential need to retire one or more of its nuclear power plants in Illinois. The early retirement of the Byron or Quad Cities nuclear stations could impact for the need for future transmission circuits, for the GPG Project. Dauphinais, SKP Exh. 2.0, pp. 13-14, ll. 281-293.

#### **IV. Routing Considerations**

Assuming that ComEd's project can even be awarded a CPCN, routing must be considered. With regards to routing, as a threshold matter, ComEd cannot be granted a CPCN as it has failed to comply with the statutory mandate to provide alternative routing. However, if the Commission does choose to excuse ComEd's failure, it should order ComEd to construct the line along the primary route with the following adjustments: (i) the adoption of either a combined

Kenyon Bros./Deutsch alternative or Dauphinais adjustment 1; (ii) Dauphinais adjustment 2; (iii) and undergrounding in suburban areas. Specifically, this Commission should reject the Forest Preserve's proposed adjustment as incomplete, incomprehensible, and violative of due process rights of surrounding landowners and also reject the Kenyon Bros. adjustment, if taken alone. Further, the Eastern Portion of the route should be placed underground.

A. ComEd's failure to provide alternative routing bars an award of a CPCN because no good cause was shown to fail to comply with a statutory mandate

As a threshold matter, ComEd cannot be awarded a CPCN due to its failure to comply with the statutory requirement of providing alternative routing. ComEd willfully assumed this responsibility when it elected to proceed under §8-406.1 of the Public Utilities Act. In exchange for expedited proceedings, ComEd undertook a responsibility to provide "one or more alternate rights-of-way for the Project as part of the filing." 220 ILCS 5/8-406.1(1)(B)(viii). It failed to do so for at least 20 percent of distance of the primary route. Murphy, Dir., ComEd Exh. 5.0, 22:433-35. In fact, in the portion of the route that impacts the most individuals, the Eastern Portion, the portion east of Plato Center, Illinois, no meaningful alternative route is provided. Dauphinais, Dir., SKP Exh. 1.0, 17:384-85. If the percent were measured in individuals impacted, the 20 percent figure would be a gross underestimation. This Commission cannot exceed the bounds of the authority provided by the General Assembly and award a CPCN when requirements are not met. See, *In re Ameren Transmission Co. of Ill.*, Order, p. 10 (entered Aug. 20, 2013) (discussing the myriad of issues in §8-406.1 proceedings, but accepting the Commission must follow the directives set forth by the General Assembly).

When the General Assembly passed 2009 House Bill 4649, it amended §8-406 and wholly created §8-406.1. P.A. 90-561. Thus, while it simultaneously considered both statutes, the General Assembly chose to require an alternative route in the expedited portion, but did not amend

§8-406 to include such a requirement. *Id.*, see also, 96<sup>th</sup> Ill. Gen. Assem., House Proceedings, Feb. 23, 2010 (statement of Representative Reitz) (“We set additional requirements and costs in there. . .”). ComEd and its agents have spent at approximately 14,000 person-hours routing this project. Murphy, D., Tr., 260:19-22. The earliest public outreach took place less than a year ago – and even then, no routes were being put forth. Murphy, D., Tr., 260: 23-25 – 261:1; ComEd Exh. 5.03, p. 14. It is no surprise to discover that individual landowners, who wish to propose adjustments to routing are at a titanic disadvantage in an expedited, mere 225 day, docket. A landowner in a suburban area, such as intervenor Tomasiewicz, not only lacks adequate time to create and submit an alternative route, but has been denied the opportunity to advocate for an alternative route that ComEd should have used its thousands of person-hours prior to filing to develop. Tomasiewicz, Dir., Exh. 1.0, 7:127-129.

ComEd asserts that good cause for its failure exists because no alternative route corridor existed for the project it was proposing. 220 ILCS 5/8-406.1(1)(B)(viii); Petition, ¶ 10, Murphy, Dir., ComEd Exh. 5.0, 23:449-451. As a relatively new statute, neither this Commission, nor any Court, has defined what constitutes good cause for shirking the mandated alternative route and denying landowners in more densely populated areas a chance to meaningfully advocate for an alternative route. However, it would defy logic to find that ComEd has provided sufficient evidence of good cause in these proceedings. ComEd’s initial attempt to explain its failure to comply with the mandate was limited and cursory. Dauphinais, Dir., SKP Exh. 1.0, 18:388-89 (suggesting that ComEd should have indicated what alternatives were considered and why they were infeasible). As the evidence developed, ComEd’s attempts to show good cause remained unconvincing.

ComEd failed to provide alternatives because it routed not just for this project, but also “potential future circuits.” Murphy, Reb., ComEd Exh. 18.0, 6:108-09. Ms. Murphy, who works primarily for utility companies, testified that these circuits are not part of these proceedings.



Murphy, Tr., 260:3-10, 261:10-14, see *also*, Kaup, Tr., 109:8-9. It is unknown if these other circuits will ever be built. ComEd is seeking right-of-way acquisitions that exceed even the already unnecessarily wide route. Target, Tr., 132:9-12. It is doing so to place taller superstructures than are necessary, at a cost of \$71 million dollars in excess of anything the PJM board reviewed and approved as part of the RTEP. Kaup, Tr., 110:14-22; Naumann, Tr., 390:13-391:11. ComEd's response to these concerns affecting routing was lacking. Mr. Dauphinais, who has submitted routing testimony in proceedings throughout this State, country, and Canada,<sup>3</sup> renewed his concern that ComEd's narrowing limitations may have resulted in the exclusion of additional alternatives that could have identified one or more additional suitable routes. Dauphinais, Reb., SKP Exh. 2.0, ll. 264-269.

Further complicating matters, ComEd's routing study assumes that it is necessary to site transmission line superstructures a significant distance from linear opportunities, such as roads, solely for the purpose of installing a yet to be proposed set of transmission line components between the presented route and linear opportunity. Murphy, Tr., 274:12-21. The three circuits that would be held by the additional triple circuit poles are not part of the proceedings and it is unknown if they will ever be built. All in all, the entirety of the routing study is incompetent, unnecessarily hampered, and unnecessarily limited by hopes aspirations of future projects that are neither before this Commission, nor approved by the PJM RTEP process. As an additional concern, ComEd limited its routing study to areas that it already held existing property rights. *Id.*, 6:117; Kaup, Tr., 112:5-11; see *also*, Tomasiewicz, Dir., Exh. 1.0, 6:110-113.

Essentially, ComEd is asking that this Commission to allow it to shirk its statutorily mandated, present, responsibility to provide an alternate route in exchange for not one, two, three, or four extra circuits, but *five* additional circuits and an entire second set of transmission line

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<sup>3</sup> See, Dauphinais Dir., SKP Exh. 1.0, ll. 34-50 (listing thirteen proceedings).

superstructures. ComEd is commandeering an expedited docket for a single circuit in order to create a transmission line supercorridor that will render future routing decisions in possible future proceedings *fait accompli*. This is not only inappropriate; it also cannot serve as good cause to shirk statutory responsibilities it voluntarily assumed in exchange for expedited proceedings.

B. The failure to provide an alternative route, without good cause, is not harmless

Concerns about a lack of a reasonable alternative route being provided are completely legitimate. Ignoring for the moment that ComEd's sole proposed route was the product of a flawed routing study that assumed an unnecessarily wide corridor needed for its transmission line supercorridor, suburban intervenors Tomasiewicz and Mason have made it clear that one of their primary concerns is home value depression. Tomasiewicz Dir., Exh. 1.0, ll. 47, 50 – 100, Mason Dir., Exh. 1.0, ll. 36 – 40. This concern was echoed by other intervenors in this docket as well. King, Dir., ll. 81-84 (on behalf of intervenor School District U-46)<sup>4</sup>. The evolution of this docket has done nothing to ameliorate those concerns; indeed, it has exacerbated them.

ComEd's only attempt to alleviate residential value concerns was put forth by Mr. Roddewig. Roddewig, Reb., ComEd Exh. 19.0, *generally*. However, even Mr. Roddewig admits that some studies show decreases in values due to health concerns. *Id.*, at ll. 539-552. Mr. Roddewig has even authored a paper that indicates that prices only recover if, and after, new studies that show earlier health concerns are unproven. *Id.* It follows then, that if no later studies indicate lack of justification for concern, then home values will remain depressed.

ComEd's own witnesses have justified the concerns of the landowner intervenors concerning health effects. For example, Dr. Valberg has authored a paper titled *Childhood Leukemia: Electric and Magnetic Fields as Possible Risk Factors*. Valberg, Tr., 332:15-20. Dr.

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<sup>4</sup> It is worth noting that this intervenor also made it apparent that the route runs directly adjacent to an elementary school. King, Dir., ll. 52-55.

Valberg admits that there is suspicion that electromagnetic fields are a suspected risk factor for childhood leukemia. *Id.*, 333:2-5. Moreover, Dr. Valberg, relying on calculations by ComEd, indicates that EMF exposure in the right-of-way is projected to be up to 50 milligauss. *Id.*, 370:4-7. However, a paper that Dr. Valberg has cited, *Pooled Analysis of Magnetic Fields in Childhood Leukemia*, indicates that an individual exposed to as little as 4 milligauss of EMF is twice as likely to suffer from childhood leukemia. *Id.*, 371:1-4, 372:1-3. While qualifying his answer, even Dr. Valberg cannot guaranty that there is not an EMF to adverse health effect link. *Id.* 338: 23-25, 339:1.

Dr. Valberg's contention that if EMF caused disease, then the increase in exposure to EMF should have resulted in an increase of disease is flawed. Dr. Valberg ignored that medical science has improved dramatically. *Id.*, 340:20-21. He further ignored that cardiovascular disease, a leading cause in death, has decreased due to prevention and healthier lifestyles. *Id.* 342:20-22, 343: 3-13. In fact, Dr. Valberg admits that the increase in healthier lifestyles, decreased smoking, decreased use of alcohol, better diets, and more exercise all decrease disease. *Id.* 343:18-25. It is not surprising then, that as Dr. Valberg admits; laypersons are fearful and anxious about adverse health effects from transmission line EMF. *Id.* 340:1-4. Mr. Roddewig says this decreases home values. Accordingly, even if not apparent that these factors are mitigating adverse affects of exposure to EMF, the public, *i.e.* those who determine the value of a home, are likely to remain unpersuaded.

The simple fact of the matter is that people do not want to live near power lines. Even ComEd's routing witness does not want to. Murphy, Tr., 276:2-3. Accordingly, home values decrease because of perceptions held, justified or not, regarding harm from transmission line EMF. Accordingly, ComEd's failure to abide by the mandate to provide an alternate route, as handed down by the General Assembly, harms the thousands of individuals in the densely populated

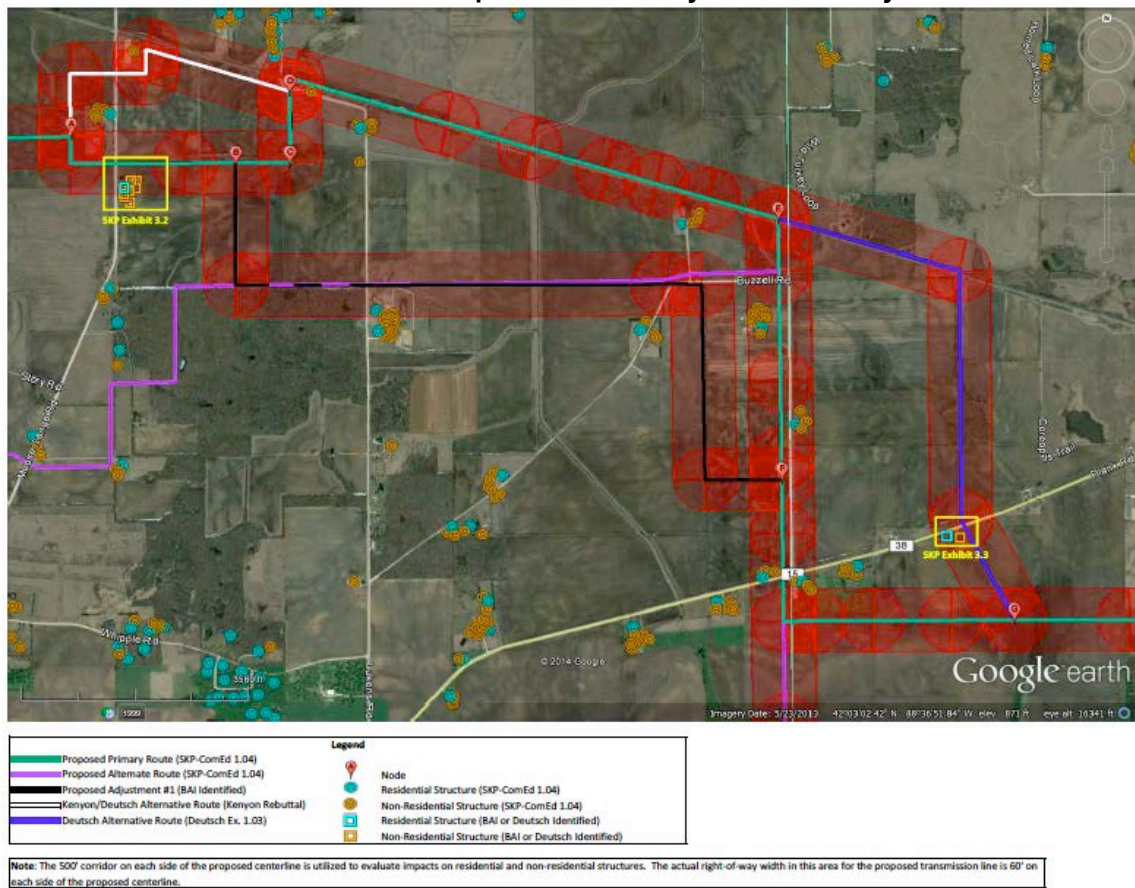
Eastern Portion of the project by denying them a reasonable opportunity to advocate for alternative routing.

C. The Commission should approve a route utilizing a combination of the Kenyon Bros. and Deutsch adjustments

If, for some reason, the Commission decides not to require ComEd to fulfill the statutory obligations it undertook by choosing to proceed under an expedited docket, several adjustments should be made to ComEd's proposed routing. To begin with, a combination of the Deutsch and Kenyon Bros. adjustments is the best routing for the proposed project in the vicinity of the DeKalb County – Kane County line. SKP Exh. 3.1, see Illustration 1. This combined alternative is categorically superior to the portion of the ComEd routing it replaces. This combination is easily discerned below by proceeding from west to east along ComEd's proposed primary route (green to A), utilizing the Kenyon/Deutsch Alternative Route (white to D), proceeding, again, on ComEd's proposed primary route (green to E), and continuing onwards along the Deutsch alternative route (blue to G) before continuing on the proposed primary route (green).

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**Illustration 1 – Overview Map for Kane County/DeKalb County Line Area**



This combined routing is the best routing in this area. Dauphinais, Cross Reb., 19: 348-49. As shown in the table below, taken from SKP Exhibit 3.8, the route is shorter, cheaper, reduces impact to residences, reduces impact to non-residential structures, and parallels existing infrastructure. ComEd's own witness does not foresee any issues with constructing the route. Kaup, Tr., 108:15-20. Further, ComEd's routing witness did not express any citing concerns with this proposed adjustment, other than Forest Preserve property concerns, which are addressed below.

**Table 1 – Superiority of Kenyon Bros. & Deutsch Combination**

<u>Factor</u>	<u>Description</u>	<u>Difference</u>
1	Length of Line	Adjustment is 0.28 miles (5.9%) shorter.
2	Difficulty of Construction	No significant difference identified.
	Cost of Construction	Adjustment is \$0.18 million (1.0%) less.
3	Difficulty and Cost of Operation and Maintenance	No significant difference identified.
4	Environmental Impacts	Adjustment parallels the existing railroad corridor through the Burlington Prairie Forest Preserve.
5	Impacts on Historical Resources	No significant difference identified.
6	Social and Land Use Impacts	No significant difference identified.
7	Number of Affected Landowners and Stakeholders	No significant difference identified.
8	Proximity to Homes	Adjustment places 4 (50.0%) fewer residences within 500 feet of centerline.
	Proximity to Other Structures	Adjustment places 19 (52.8%) fewer non-residential structures within 500 feet of centerline.
9	Proximity to Existing and Planned Development	No significant difference identified.
10	Community Acceptance	No significant difference identified.
11	Visual Impact	No significant difference identified.
12	Presence of Existing Corridors	Adjustment has 2.53 miles parallel to railroad corridor versus 1.51 miles on the portion of the ComEd Primary Route replaced.

Unfortunately, ComEd is unwilling to consider this alternative because of its inability to condemn Forest Preserve District property. It appears that the Forest Preserve District of Kane County may very well agree to grant an easement to ComEd. Lenschow, Cross Reb., Exh. 2.0 Revised, ll. 42-45. It is worth noting that ComEd takes no issue with a lack of set terms in stone with respect to the Kenyon Bros. proposed readjustment. *Infra*. While ComEd may lack the ability to obtain eminent domain authority over the property of the Forest Preserve District of Kane County, the Forest Preserve District has made it clear that it can grant ComEd the right-of-way needed. Meyers, Dir., Meyers Exh. 1.0, *generally*.

Property owned by railroads may not be condemned for transmission line siting. *In re City of Creede, CO – Petition for Declaratory Order*, Opinion, STB Finance Docket 34376, 2005 STB LEXIS 486, \*12-13 (Surface Transp. Bd. May 3, 2005). Yet, ComEd goes out of its way to utilize

railroad right-of-ways. Therefore, it cannot be argued to be unreasonable to, nor is the Commission prohibited from, ordering a route that includes Forest Preserve District Property. See, e.g., *Lazazzera v. Commonwealth Edison Company*, Docket No. 90-0265 (Order at 24, May 28, 1992) (The Forest Preserve's unwillingness to provide an easement for this route does not preclude consideration of a route on its property.")

Because of the clear superiority of the combination of the Kenyon Bros. and Deutsch routes, and the fact that there is legitimate potential for ComEd to negotiate a right of way for this superior route, ComEd should be ordered to construct the line along that route. ComEd should not be allowed to avoid superior routes due to time constraints on negotiations that it self-imposed by electing to proceed under §8-406.1

D. In the event that the Combination is not accepted, the next best routing is Dauphinais Adjustment 1

ComEd's primary route runs directly in front of a generations old dairy farm and well into the front yard of Mr. William Lenschow. As explained by not only Mr. Lenschow, dairy farmers are concerned about the effects of stray voltage on their dairy operations. See, e.g., *Lenschow, Dir.*, II. 47-48. Due to ComEd choosing to route the proposed transmission line at a distance far enough from the road to support five additional circuits, as well as an entire additional set of transmission line superstructures, the proposed transmission line runs through Lenschows' front yard, quite near a dairy barn, and over a fenced cow grazing area. *Lenschow, Dir.*, Exh. 1.0, II. 51-53, 55-59, 75-76, *Cross Reb.*, Exh. 2.0 Revised, II. 79-82. ComEd's proposed routing is not acceptable, and superior routing exists even if the Kenyon Bros. and Deutsch combination is not adopted. This superior route is Dauphinais Adjustment 1.

Dauphinais Adjustment 1 is visually depicted as the black line in Illustration 1, *supra*.<sup>5</sup> It diverges from ComEd's proposed primary route at point B, heading south. When it meets ComEd's proposed alternate route, it then tracks parallel to it, approximately twenty to thirty feet north, due to a ground disturbance that can be thought of as an apparent section line. Dauphinais, Tr., 233:14-20. Upon approaching the property line of Lenschow, Dauphinais Adjustment 1 proceeds south for some distance before traversing east to rejoin ComEd's proposed primary route. In addition to alleviating the visual impacts and impacts to Lenschow's dairy operation, the route is superior to ComEd's proposed primary route as it is shorter, only marginally more costly, impacts four fewer residences, and impacts twenty fewer non-residential structures. Dauphinais, Dir., SKP Exh. 1.0 Revised, ll. 288-292.

**Table 2 – Superiority of Dauphinais Adjustment 1**

<u>Factor</u>	<u>Description</u>	<u>Difference</u>
1	Length of Line	Adjustment #1 is 0.14 miles (5.1%) shorter.
2	Difficulty of Construction	No significant difference identified.
	Cost of Construction	Adjustment #1 is \$0.07 million (0.7%) higher.
3	Difficulty and Cost of Operation and Maintenance	No significant difference identified.
4	Environmental Impacts	No significant difference identified.
5	Impacts on Historical Resources	No significant difference identified.
6	Social and Land Use Impacts	No significant difference identified.
7	Number of Affected Landowners and Stakeholders	No significant difference identified.
8	Proximity to Homes	Adjustment #1 places 4 (80%) fewer residences within 500 feet of centerline.
	Proximity to Other Structures	Adjustment #1 places 20 (90.9%) fewer non-residential structures within 500 feet of centerline.
9	Proximity to Existing and Planned Development	No significant difference identified.
10	Community Acceptance	No significant difference identified.
11	Visual Impact	No significant difference identified.
12	Presence of Existing Corridors	For 1.51 miles (58.5%) of its total length, Adjustment #1 closely parallels only apparent property and field lines rather than an existing railroad corridor.

<sup>5</sup> A detailed description of Adjustment 1 can be found in the Revised Direct testimony of Mr. Dauphinais. Dauphinais, Dir., SKP Exh. 1.0 Revised, ll. 236-246.



SKP Exhibit 2.1. Even if the residences and structures of Mr. Lenschow are discounted, which they should not be, there is still a net benefit in utilizing Dauphinais Adjustment 1. Dauphinais, Tr., 249:19-22. ComEd witness Kaup explicitly states that the cost comparisons are not disputed and that the route is constructible. Dauphinais, Reb., SKP Exh. 2.0, ll. 31-38. Additionally, ComEd witness Murphy did not dispute the values for length, homes impacted, other structures impacted, and presence of existing corridors. *Id.* ll. 22-28. Finally, Neither Kaup, nor ComEd witness Leeming, suggested that the adjustment would decrease performance of the proposed project. *Id.*, ll. 39-45. The slight increase in cost is more than offset by the reduced residential impact. Order, *In re Illinois Power Company d/b/a Ameren IP & Ameren Illinois Transmission Co.*, Docket 06-0179, p. 16 (May 16, 2007) (“Although the Staff proposal is longer and thus more costly, it provides, among other things, an important benefit of avoiding the siting of high-voltage transmission lines in close proximity to residential dwellings.”)

Stray voltage is a legitimate concern of dairy farmers. ComEd’s own witness, Dr. Valberg, has testified that transmission lines running parallel to distribution lines can generate stray voltage. Valberg, Reb., ComEd Exh. 20.0, ll. 596-600. He has further testified that even a semitrailer parallel to the proposed transmission line can generate stray voltage. Valberg, Tr., 355:19-24, see also, Kaup, Tr., 123:4-17. A fence running parallel to the transmission line can generate stray voltage. Kaup, Tr., 123:9-14. While it is true that some farmers may utilize electrified fences, no one has testified that a dairy farmer would utilize them, or that a dairy cow will repeatedly wander into one. To the contrary, Dr. Valberg agrees that such a fence would serve as a deterrent to running into the electrified fence repeatedly. Valberg, Tr., 361:14-16.

What is the concern about stray voltage? When a conductor is downed due to a weather event or other fault, it presents a hazard. Valberg, Tr., 364:3-8. Importantly for a dairy farmer, stray voltage adversely affects dairy cow health and results in reduced, lower quality, milk output.

Lenschow, Dir., ll. 49. Even Dr. Valberg would seem to be aware of this, as he notes that the United States Department of Agriculture's publication, *Effects of Electrical Voltage / Current on Farm Animals: How to Detect and Remedy Problems*, is a good stray voltage resource. The very publication put forth by Dr. Valberg states: "Still the relationship between an elevated neutral to earth voltage and stray voltage is so strong that a reduction of elevated neutral to earth voltages should be considered within the context of normal farm management programs regardless of a proven stray voltage problem." Valberg, Tr., 350:23-351:4.

With ComEd's own witness making such statements, this Commission should recognize the concern that dairy farmers harbor regarding transmission lines is well-founded. Yet, ComEd, despite negotiating a mitigation agreement, has not agreed to mitigate impacts from stray voltage. The Agricultural Impact Mitigation Agreement, ComEd Exhibit 7.01, does not contain any mitigation efforts to reduce the possibility of impacts from stray voltage. *Id.*, 138:24-139:2. Further, ComEd does not propose to compensate any dairy farmers for lost dairy production. ComEd's standard easement agreement does not reference compensation for damages resulting from stray voltage. Targett, Tr., 139:20-23. In fact, it does not compensate landowners for any damage to livestock. *Id.*, 140:16-19.

The Deutsch intervenors have suggested that purported lack of public outreach in developing this adjustment makes it less worthy for consideration. Such a position is untenable. To begin with, ComEd chose to proceed under an expedited docket, providing intervenors an absurdly short time to develop alternative routes, let alone engage in a thousand of person-hours public outreach process. ComEd's public vetting, including the alternative route, was filed with the Commission. ComEd Exh. 5.03, *generally*. All landowners on Dauphinais Adjustment 1 were notified of the proceedings, and for over half its length, including near the Deutschs, it is nearly identical to ComEd's proposed alternative route. Dauphinais, Reb., SKP Exh. 2.0, ll. 232-236.

Accordingly, being time constrained, and under absolutely no statutory duty to conduct public outreach similar to ComEd's, Dauphinais Adjustment 1 utilized a feedback process that relied on the notice of the proceedings and the ability for parties to submit rebuttal testimony. Dauphinais, Tr., 217:10-13. This Commission has accepted adjustments utilizing this approach. Dauphinais, Tr., 250:19-251:3 (citing to Ill. Commerce Comm'n Docket 06-0179). This completely legitimate method of vetting the route and soliciting input worked; Deutsch parties intervened, and provided feedback, including a routing adjustment. Deutsch Dir., Deutsch Exh. 1.0, *generally*.

The Deutsch's main feedback was an expression of concern that Dauphinais Adjustment 1 simply took Lenschow's concerns, and made them the concerns of the Deutschs. Deutsch Dir., Deutsch Exh. 1.0, ll. 73-77, 93-95. This is simply not the case. It is true, both Mr. Deutsch and Mr. Lenschow are concerned about stray voltage. Deutsch Dir., Exh. 1.0, ll. 109-111. However, Mr. Lenschow is much more impacted by the proposed primary route than Mr. Deutsch is by the adjustment. Mr. Deutsch contends that his nearest structure to the centerline of Dauphinais Adjustment 1 is 393 feet. It is actually 34 feet further away. Dauphinais, Cross Reb., SKP Exh. 3.0, ll. 71-72. Mr. Deutsch has only "planned to expand his dairy farm north." Statement of Deutsch Counsel, Tr., 235:23-25, *referring to*, Deutsch Dir., Deutsch Exh. 1.0, ll. 63-66. As is appropriate, this planned expansion, with no provided timetable or plans other than a general northward expansion, was considered, but given limited weight. Dauphinais, Tr., 236:9-11.

As noted by ComEd, "Planned/Proposed Non-Residential Development" was part of the sensitivity prioritization exercises in its public outreach. ComEd Exh. 5.03, App. G, p. 6. Stakeholders gave such plans a lower priority than existing homes. *Id.* During public input meetings, which Deutsch was notified of, planned expansion of non-residential structures was not identified as a sensitivity in agriculture, and a low sensitivity under land use. *Id.* at pp. 2-3 of Comprehensive Open House Summary. Staff witness Rashid tacitly approved of this prioritization.

See, Staff Exh. 2.0, Il. 241; Rashid, Tr., 170:7-15 (Staff witness Rashid relying upon ComEd's direct testimony and exhibits in stating that routes were satisfactory). Further, he approved of the route development of Dauphinais, which utilized the same method as ComEd. Rashid, Tr., 177:5-10. Accordingly, it is appropriate to give limited weight to Deutsch's purportedly planned non-residential development.

According to Deutsch, the nearest *existing* structure to the section line is 393 feet. Deutsch Reb., Deutsch Exh. 1.00, Il. 84-89. The distance to the centerline of Adjustment 1 is actually 408 feet, due to the fact the route progresses just north of the section line because of ground disturbance. Dauphinais, Cross Reb., SKP Exh. 3.0, Il. 59-62. The closest structure is, in fact, a full 427 feet from the centerline of Dauphinais Adjustment 1. *Id.*, Il. 71-72.

In stark contrast, due to the fact that ComEd's proposed primary route is 135 feet from the road, the transmission line is much closer to Lenschow's residence and dairy barn than Dauphinais Adjustment 1 is to Deutsch's structures. Lenschow, Cross Reb., Lenschow Exh. 2.0 REVISED, Il. 76-82. In fact, Mr. Lenschow's residence is a mere 247 feet from the proposed primary route and his nearest non-residential structure is a mere 222 feet from the proposed primary route. Dauphinais, Cross Reb., SKP Exh. 3.0, Il. 73-84.

This adjustment is not a trade of one dairy farmer's concern for another's. Here, there is a trade off of a home and dairy production facility within 250 feet of a proposed transmission line for a non-residential structure a full 427 feet away from an adjustment. The impacts of ComEd's route to Lenschow are far greater than those impacts of Dapuhinais Adjustment 1 to William Deutsch. Additionally, as indicated above, even after ignoring the benefits to Lenschow, Dauphinais Adjustment 1 is superior, shorter, impacts fewer residences, and impacts fewer non-residential structures.

ComEd has pejoratively painted such adjustments as “parochial” and as simply shifting a burden from one place to another. Murphy, Reb., ComEd Exh. 18.0, ll. 57-59; Murphy, Surr., ComEd Exh. 26.0, ll. 20-21. Such characterizations are unfair and lack credibility. Firstly, to accept such a characterization, the intervenors, Staff, and this Commission have to ignore that ComEd purposefully, and inappropriately, routed a transmission line much further than necessary from an existing road. Secondly, the intervenors, Staff, and this Commission have to ignore the fact that ComEd purposefully shirked its duty to provide an alternate route for the portion of the route running through the middle of Lenschow’s front yard. Finally, the intervenors, Staff, and this Commission have to ignore that ComEd’s characterization essentially means that unless a landowner holds large swaths of land in opportune locations, allowing rerouting to be accomplished on her own property, it is “parochial” and “simply shifting burdens” to propose categorically superior routes – regardless of motivation. Such characterizations simply do not square with the reality of proceedings involving transmission line siting. Indeed, anytime ComEd’s proposed primary and proposed alternate routes sit on different parcels, a shift between the very routes put forth by ComEd would simply shift the impact of the from one location to another, a so-called “parochial” sentiment. Murphy, Tr., 266:14-19.

Apparently, ComEd would have no landowner, whose property could end up as part of a condemnation proceeding, put on evidence of superior routing if that superior route happens to move the transmission line elsewhere. Indeed, ComEd would ignore the fact that its own routing might be more expensive, longer, impact more residences, and impact more residential structures. This Commission simply cannot accept ComEd’s characterization of intervenors who are providing superior routing options.

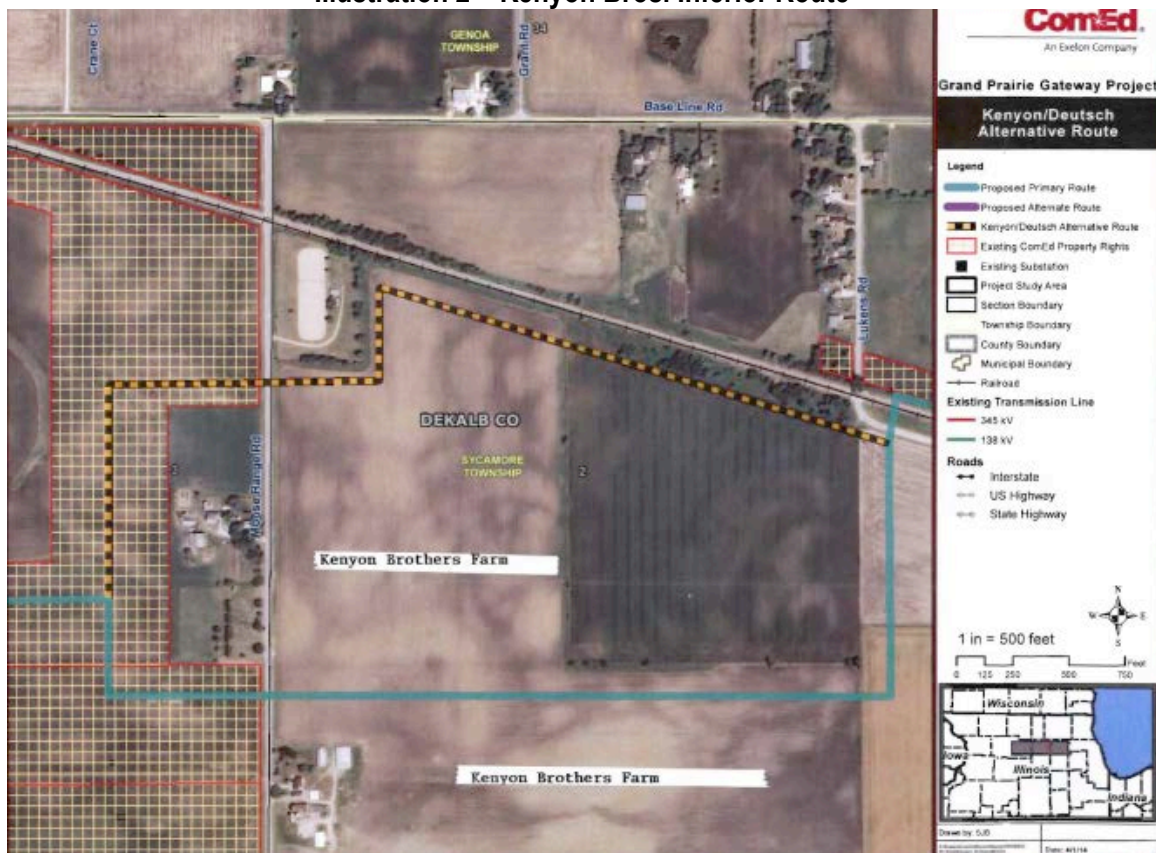
For the foregoing reasons, it is submitted that if the Commission allows ComEd to shirk its duty to provide an alternate route, and further refuses to pursue the vastly superior Kenyon Bros.

and Deutsch combined alternative route, it should find Dauphinais Adjustment 1 to be superior and less impactful to surrounding landowners and, therefore, order ComEd to construct the proposed project on Dauphinais Adjustment 1.

E. The Kenyon Bros. Adjustment, taken alone, is inferior and should not be adopted

The Kenyon Brothers Company put forth a proposed routing adjustment that should not be accepted by the Commission, alone. Again, it should be reiterated that when taken in combination with the Deutsch alternative, the combined route is the best routing in the Kane County / DeKalb County line vicinity. However, when taken alone, the Kenyon Bros. re-routing has minimal benefit for, or adverse impact to, Kenyon Bros., while continuing to utilize routing that severely impacts not only the residence and dairy operations of Mr. Lenschow. Additionally, when not combined with the Deutsch routing, it costs more than the proposed route it replaces.

**Illustration 2 – Kenyon Bros. Inferior Route**



Kenyon Bros., Reb., (unnumbered) p. 3. The Kenyon Bros.' proposed routing traverses almost exactly the same length of ground, utilized the same way, as the proposed primary route. Dauphinais, Cross Reb., SKP Exh. 3.0, Il. 115-117; Kenyon Bros., Reb., (unnumbered) pp. 2-3. Strangely, ComEd has helped Kenyon Bros. create a route that requires not only more transmission line superstructures to be placed on their farm ground, but also requires them to be more robust. See, SKP Exh. 3.5 Revised;<sup>6</sup> Murphy, Surr., ComEd Exh. 26.0, Il. 85, Kaup, Surr., ComEd Exh. 27.0, Il. 35-38. These additional, more robust, and larger, superstructures should have the effect of taking more, not less, ground out of production for Kenyon Bros. Dauphinais, Tr., 239:19-240:2 (Cross examination by ComEd's counsel). Thus, not only does this route fail to objectively benefit Kenyon Bros., but also, when taken alone, continues to immensely impact Mr. Lenschow.

Moreover, the Kenyon Bros. proposed re-routing costs fourteen percent more, compared to the portion that is replaced. Dauphinais, Cross Reb., SKP Exh. 3.0, Il. 141, *see also*, Kaup, Surr., ComEd Exh. 27.0, Il. 35-38. Finally, this route remains contingent upon Kenyon Bros. and ComEd agreeing on the price to be paid for the property. Murphy, Surr., ComEd Exh. 26.0, Il. 95-97. These terms have not been agreed upon. Murphy, Tr., 270:6-12, 23-271:1.

Contrary to ComEd's own mischaracterization of behavior regarding burden shifting between affected landowners, ComEd has apparently worked with, and even developed routing and maps for, Kenyon Bros. Kenyon Bros., Reb., (unnumbered) pp. 2-3, *see also*, Murphy, Tr., 267:14-19. In playing most-favored-landowner with the Kenyon Bros., ComEd is attempting to maintain an onerous burden on William Lenschow's home and dairy operation in order to provide for a route that does nothing for the Kenyon Bros., or at the worst, actually causes more impact to the land of the Kenyon Bros, all imposing additional costs.

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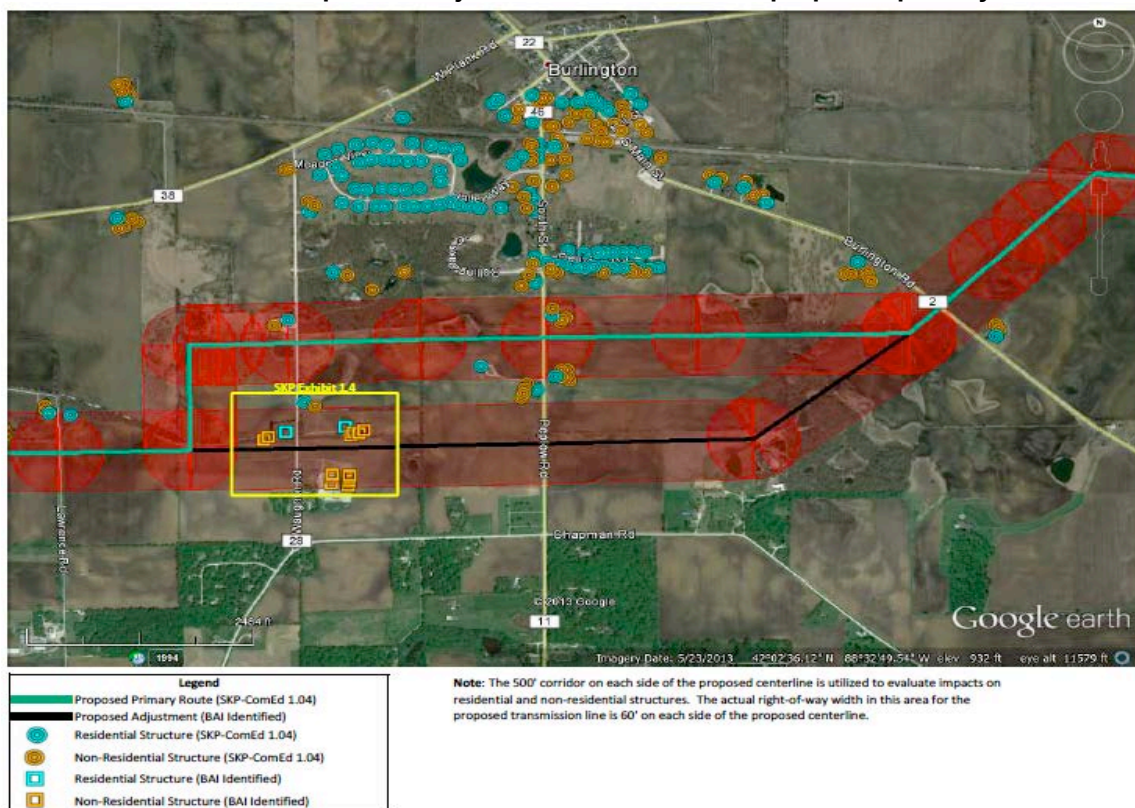
<sup>6</sup> Only the confidential version of this exhibit contains the values referred to.

As indicated above, the Kenyon Bros. proposed route, taken alone, is inferior to that of the proposed primary route. As the proposed primary route is inferior to Dauphinais Adjustment 1, the Kenyon Bros. proposed route, taken alone, is inferior to Dauphinais Adjustment 1. Accordingly, this Commission should disregard the Kenyon Bros. proposed route, and order that ComEd utilize Dauphinais Adjustment 1, which costs less and impacts less homes and non-residential structures.

F. Dauphinais Adjustment 2 is superior to ComEd's proposed primary route

South of the Village of Burlington, ComEd's proposed primary route makes two ninety-degree turns, bringing the proposed primary route further north. This route, is inferior to Dauphinais Adjustment 2. The Adjustment removes two ninety-degree turns, has the line continue west-to-east, and utilizes the same angle for a northeasterly return to the railroad right-of-way.<sup>7</sup>

**Illustration 3 – Dauphinais Adjustment 2 and ComEd's proposed primary route**



<sup>7</sup> A detailed description of Adjustment 1 can be found in the Revised Direct testimony of Mr. Dauphinais. Dauphinais, Dir., SKP Exh. 1.0 Revised, ll. 317-324.



SKP Exh. 1.3. Dauphinais Adjustment 2 is shown in black in Illustration 3.

The Drexler residence, like several other residences, is impacted by ComEd's proposed primary route. The Drexlers live and work on the impacted property. Drexler, Dir., Drexler Exh. 1.0, ll. 23-50. In fact, ComEd's proposed primary route comes within 275 feet of Drexler's residence and 225 feet of his business's outbuildings. *Id.* If ComEd decides to route yet another set of transmission line superstructures, as it has suggested it might, the second set of lines would be approximately only 175 feet away from his home. *Id.* Beyond the eyesore, corona noise, and the concerns over EMF – justified or not, Mr. Drexler fears that the perception of the transmission lines will lead to a loss of business and employees. *Id.*

The Pienkowskis are also affected by the proposed primary route. Beyond Mr. Pienkowskis concerns about corona noise and EMF issues, Kristine Pienkowski has businesses involving equine assisted psychotherapy. Pienkowski, T., Dir., Exh. 1.0, ll. 37-44. Pienkowski, K., Dir., Exh. 2.0, ll. 62-64. The transmission line superstructures, if routed pursuant to ComEd's proposed route, would be visible from locations utilized in psychotherapy. Pienkowski, T., Dir., Exh. 1.0, ll. 27-29. She has expanded her facilities and spent great sums of money to provide a relatively rare service. *Id.* ll. 66-72, Hirschberg, Dir., Pienkowski Exh. 3.0, ll. 41-44, 58-61. A transmission line may adversely affect the therapy services offered on her property. *Id.*, ll. 80-92. In fact, in a survey conducted by Debra Hirschberg, LCSW, it was apparent that her clients would not feel safe or comfortable near the proposed transmission line. Hirschberg, Dir., Pienkowski Exh. 3.0, ll. 111-127. If the proposed primary route is accepted, the area would lose one of the few providers for the services offered through Ms. Hirschberg at Ms. Pienkowski's property. *Id.*, ll. 129-134.

Fortunately for the Drexlers and Pienkowskis, a superior route to the south of ComEd's proposed primary route exists, Dauphinais Adjustment 2. Illustration 3, Black Line, *supra*. This

adjustment is shorter, cheaper, and impacts less residences. Dauphinais, Dir., SKP Exh. 1.0 Revised, ll. 364-367. The only disadvantage of the route is an increase in non-residential structures, which can be attributed to a nursery operation. See, Illustration 3, *supra* (lower portion of yellow box). Not only has that landowner been notified, and not participated in these proceedings, but also reduced impacts to residences outweigh impacts to non-residential structures. Dauphinais, Dir., SKP Exh. 1.0 Revised, ll. 369-371, Notice of Admin. L. Judge's Ruling, Docket 13-0657 (Apr. 1, 2014). This Commission has previously determined that a reduction in cost is outweighed by a reduction in impacts to residences. Order, *In re Illinois Power Company d/b/a Ameren IP & Ameren Illinois Transmission Co.*, Docket 06-0179, p. 16 (May 16, 2007) ("Although the Staff proposal is longer and thus more costly, it provides, among other things, an important benefit of avoiding the siting of high-voltage transmission lines in close proximity to residential dwellings.") Applying this logic, a reduction in impact to residences outweighs an increase in non-residential structures. This is especially true when the additional non-residential impacts are attributed to a single complex whose owner has elected to not participate in these proceedings.

ComEd witness Kaup explicitly states that the cost comparisons are not disputed and that the route is constructible. Dauphinais, Reb., SKP Exh. 2.0, ll. 31-38. Additionally, ComEd witness Murphy did not dispute the values for length, homes impacted, other structures impacted, and presence of existing corridors. *Id.* ll. 22-28. Finally, Neither Kaup, nor ComEd witness Leeming, suggested that the adjustment would decrease performance of the proposed project. *Id.*, ll. 39-45.

Dauphinais Adjustment 2 reduces the length of the line, reduces the cost of the line, and reduces the total number of residences impacted. It also removes two ninety-degree structures. In addition, it alleviates the concerns of two intervenors in these proceedings. All affected owners of

property were notified,<sup>8</sup> and none have chosen to intervene and object to the adjustment. Accordingly, this Commission should order ComEd to utilize Dauphinais Adjustment 2.

G. The Muirhead realignment should not be accepted as an alternative to the proposed routing as it is incomplete, inferior, and violative of due process

As a threshold issue, Ellen Roberts Vogel respectfully renews her Verified Motion to Strike Direct Testimony of Monica Meyers (Meyers Exh. 1.0) as filed on behalf of the Kane (sic) Forest Preserve. The Motion asserts that the purportedly direct testimony was filed outside of the time frame of the procedural schedule, is violative of the due process rights of Ellen Roberts Vogel, and even if rebuttal testimony, rebuts nothing. The matter was fully briefed. The Motion was filed on April 4, 2014, and after a Response was issued, a Reply was filed on April 9, 2014. The Administrative Law Judge denied the Motion at the first day of hearings. Tr., 35:9-12. Vogel renewed the objection at the time Meyer's testimony was being submitted for entry into the record, as was appropriate. It was denied. Tr., 143:17-18.

Pursuant to the Rules of Practice, Ms. Vogel seeks a review of the ruling of the hearing examiner. 83 Ill. Admin. Code 200.520(a). Ms. Vogel hereby incorporates and adopts the arguments and averments as made in her Motion and Reply. In addition, she briefly notes and explains a troubling development in the cross-examination of Ms. Meyers. In the Forest Preserve's *Verified* Response to motion to strike, it repeatedly called Meyer's testimony "rebuttal" testimony. Troublingly, on cross, Ms. Meyers made it clear that the testimony purported to be, and was in actuality, her direct testimony. Meyers, Tr., 147:22-148:2. After signing off on a Verified Response to the motion to strike, alleging the testimony to be rebuttal testimony, the Forest Preserve's counsel stipulated that the direct testimony was filed late. Tr., 149:4-7. Thus, Vogel forewent

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<sup>8</sup> To be fair, notifications relating to the Dauphinais Adjustments relied upon information provided by ComEd in its Petition, Exhibit D, which were subsequently notified by the Commission. The only deviation was a single landowner that was not identified by ComEd, but nonetheless notified. If there are any issues with notification, they are the result ComEd's failure to disclose any correct owners of land.

arguments she could have made in reply were the Verified Response truthful, to wit, argument regarding the violated procedural schedule. Regardless of whether it was rebuttal, or direct, testimony, Meyers Exh. 1.0 should be stricken as either rebutting nothing or filed woefully late. Rewarding such behavior would set a dangerous precedent. Accordingly, Ms. Vogel seeks a review of the hearing examiner's order – which if overturned, would dispose of the Muirhead realignment as a possible realignment.

If the Commission does not overturn the ruling of the hearing examiner, it should still disregard the Forest Preserve's proposed realignment. The Forest Preserve District of Kane County ("Forest Preserve"), after succumbing to the pressures of several Kane County residents – and ignoring others, has proposed a re-alignment in the vicinity of the Muirhead Springs Forest Preserve. The realignment is incomplete, violative of due process, has more serious impacts to the surrounding area, with any purported benefit, *i.e.* cost, to be eaten up by the Forest Preserve.

The Muirhead realignment is truly a route to nowhere. The best description that the Forest Preserve provides the Commission, or any interested party, is a realignment "along the south line of the railroad tracks lying south of Muirhead Forest Preserve." Meyers, Dir./Reb., Meyers Exh. 1.0, ll. 21-23. Where the route would go after reaching the property line of the Forest Preserve is anyone's guess. In fact, the Forest Preserve does not provide any suggestions, considerations, or data for any routing that occurs outside the boundaries of its property. Meyers, Tr., 156:4-9. It truly washes its hands of the matter, leaving the remainder of the routing as a "matter for the Commission to decide." Verified Resp. to Verified Mot. to Strike 'Direct Testimony of Monica Meyers' (Meyers Exh. 1.0) as Filed on Behalf of the Kane Cty. Forest Preserve, p. 6. The Forest Preserve did not even investigate if the proposed primary route impacted residences, apparently choosing to simply cave to public pressure of a select few squeaky gears. Meyers, Tr., 155: 14-18.

In fact, the only complete routing that has been developed, incorporating the proposed realignment, was put forth by ComEd, in surrebuttal testimony.

To begin with, ComEd's Exhibit 26.03 takes license with the limited realignment provided by the Forest Preserve. However, this is the only complete Muirhead route that can be considered, and it proceeds directly through the community of Plato Center. Murphy, Surr., ComEd Exh. 26.0, ll. 123-127. Not only would many more residences be impacted, but many would have to be displaced. *Id.* Such a route is not only woefully inferior to the proposed primary route, but it is violative of the due process rights of all individuals residing in that area. This, for the first time, complete route was revealed in ComEd's surrebuttal testimony. As feared, no intervenor, including Vogel, had an opportunity to respond to the route that, once completed, runs right through a community and displaces homes. In fact, residents of Plato Center lacked the opportunity to even adequately intervene in the matter.

Even if there were some opportunity to respond, the Forest Preserve has thwarted investigation into, and opposition to, its realignment at every turn. To begin with, in its Verified Response to the motion to strike, it repeatedly stated that the testimony was rebuttal testimony. Verified Resp., p. 6. With this information, and a narrowing of the issues, Ms. Vogel narrowed her Reply to the Verified Response, as is appropriate. In her reply, relying upon the Verified Response, Vogel forewent argument regarding the clear refusal to abide by a procedural schedule, the prejudice suffered, and otherwise. Yet, at hearings, it was unequivocally stated that the testimony was Direct Testimony. Meyers, Tr., 147:22-148:2. Additionally, the Forest Preserve failed to accurately answer data requests, despite knowing the answers to the same. Ms. Meyers was able to identify the Muirheads as residing around Muirhead Springs Forest Preserve. Meyers, Tr., 153:14-16. She was aware that their assumed relatives deeded property to the Forest Preserve District. Meyers, Tr., 153:17-25. However, when inquiry began into why this was not

provided in response to data request SKP→FP 1.03, counsel for the Forest Preserve stipulated that the Muirheads were not named. Tr., 154:5-25. Meyers did not know why this was the case. Meyers, Tr., 154: 2-4.

There may be one benefit to the realignment, reduced cost. Apparently, ComEd informed the Forest Preserve that it would save \$1.5 million dollars. Meyers, Tr., 156:10-14. This figure is never confirmed by ComEd. However, the Forest Preserve either intends to recoup all of these cost savings, or half of them – the record is unclear. Murphy, Surr., ComEd Exh. 26.0, Il. 136-140, Meyers, Tr., 156:15-157:6. As ComEd correctly notes, there is no benefit in cost savings if they simply have to be turned over to the Forest Preserve. Murphy, Surr., ComEd Exh. 26.0, Il. 138-140. Further, even if this benefit existed, it cannot be realized until a correcting document is recorded. Meyers, Dir., Meyers Exh. 1.0, Il. 40-43. At this time, the Forest Preserve has still not recorded that document. Meyers, Tr., 153: 1-3.

As indicated, the Muirhead realignment is unacceptable. It is based solely upon testimony that should be stricken, and survived due to subterfuge. Even then, it is incomplete, or, impacts and even displaces residences. The only possible reason for the Muirhead realignment is possible cost savings, which the Forest Preserve intends to swallow up. Regardless, the cost benefit would be outweighed by impacts to residences. Order, *In re Illinois Power Company d/b/a Ameren IP & Ameren Illinois Transmission Co.*, Docket 06-0179, p. 16 (May 16, 2007). Finally, the route is not even available as of yet, as no correcting document has been recorded.

H. The Eastern Portion of the project should be undergrounded

As noted above, no meaningful alternatives were provided for the Eastern Portion of the project. In part, this was due to ComEd attempting to route not only this project, but also five additional circuits that are not subject to this docket. *Supra*. Another reason provided by ComEd was the density of the population. Murphy, Dir., ComEd Exh. 5.0, Il. 446. Intervenor Tomasiewicz

certainly does not disagree that his area is densely populated. In fact, in his community alone, there are 900 residences and 2,000 individuals in a tightly knit planned development. Tomaszewicz, Dir., Exh. 1.0, Il. 28-33.

Along with refusing to move away from this densely populated community, apparently due to lack of existing property rights on the other side of a railroad corridor, ComEd has refused to consider undergrounding the project in a densely populated city, the eighth largest in the State. *Id.*, Il. 110-113, 122-125. A slew of intervenors have all suggested that undergrounding the transmission line would be appropriate. Mason, Dir., Exh. 1.0, Il. 58-59; Kaptain, Dir., City of Elgin Exh. 1.0, Il. 61-64; County of Kane, Dir., Res. No. 14-22, p. 1; King, Dir., Bd. of Educ. Of Sch. Dist. U-46, Exh. 1.0, Il. 95-98; Forest Preserve Dist. of Kane County, SKP Cross Exh. 1, Res. No. FP-R-14-02-2276, p. 1. ComEd has blown off the suggestion, summarily stating that it would be excessively costly. Kaup, Reb., ComEd Exh. 16.0, Il. 73-75. However, ComEd has put forth no competent testimony as to costs, despite intervenors have suggesting an overestimation of costs, minimization benefits, and maximization of disadvantages. Tomaszewicz, Dir., Exh. 166-168. Further, ComEd's analysis of costs does not consider the total costs of overhead transmission, such as property devaluation, as discussed above. Tomaszewicz, Reb., Exh. 1.1, Il. 16-19.

All costs of undergrounding were put forth by Mr. Kaup. He is an *overhead* transmission engineer. Kaup, Tr., 106:23-107:1. While ComEd has installed underground transmission lines, even outside of the Loop, Mr. Kaup did not submit testimony in those dockets. Kaup, Tr., 113:12-24. Mr. Kaup is not responsible for underground transmission line construction. *Id.*, 117:17-21. Indeed, Mr. Kaup doesn't even believe himself to be an expert in underground facilities. *Id.* 118:14-16. Mr. Kaup is simply not competent to testify as to the costs of burying a transmission line.

Even if Kaup were competent to provide evidence as to the costs of undergrounding the transmission line, the values provided cannot be relied upon. The testimony as to costs was based upon a preliminary analysis. Kaup, Reb., ComEd Exh. 16.0, ll. 82-83, Kaup, Tr., 114:1-4. No specific underground design was considered. *Id.* 114:19-22. No engineering study was conducted, and the data generated was less precise than final engineering would have provided. *Id.*, 114:23-115:6. Phase one engineering results in cost variations in excess of twenty-five percent. Kaup, Tr., 116:9-19. Having less information than is available after Phase 1 engineering is complete, the costs estimates would vary even more. *Id.* Having so little experience with underground transmission installation, it comes at no surprise that Kaup cannot provide a confidence level for what is admittedly a preliminary analysis. Kaup, Tr., 115:7-14. Further indicating the purposelessness of the cost estimate, the costs were based not just on the proposed project, but also on the installation of conduit for additional circuits that are not the subject of these proceedings. *Id.* 115:14-21. Finally, the preliminary analysis utilized routing that is the same as an overhead design, without considering a cheaper route that may be appropriate for an underground line. Kaup, Tr., 116:3-8, *see also*, Murphy, Tr., 265:2-6. In short, the cost estimates provided by ComEd were meaningless.

Not only did ComEd fail to take its statutory mandate to provide an alternative route seriously, it has failed to rebut any suggestions that undergrounding the transmission line in the admittedly densely populated Eastern Portion of the project is feasible. ComEd has categorically failed to provide competent evidence showing the cost of undergrounding truly exceeds the total cost to be born if the project is constructed as currently routed. Put plainly, ComEd blew off the concerns of its customers and local governments.

Accordingly, it is appropriate for this Commission to deny the application. In the alternative, the Commission could order ComEd to underground the transmission line for the



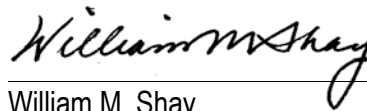
portion of the project East of Plato Center. At a minimum, the Commission should deny the application as to the Eastern Portion of the project until ComEd engages in a comprehensive study to find the most cost effective underground route for this project (not future projects). Then, with competent evidence, presumably meeting the requirements of §8-406.1(a)(1)(B), the intervenors and ComEd can make the case for whether or not undergrounding the Eastern Portion of the project should be ordered.

## **V. Conclusion**

For the foregoing reasons, the Commission should reject ComEd's application. Alternatively, if the Commission does grant a CPCN, it should order ComEd to construct the line utilizing (i) either the Kenyon Bros. and Deutsch combined route or Dauphinais Adjustment 1; (ii) Dauphinais Adjustment 2; and also (iii) underground burial of the transmission line for the Eastern Portion of the project.

Respectfully submitted,

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